

### **REMARKS**

Claims 10-18 are pending. Claims 1-9 have been canceled without prejudice.

Claim 15 has been amended to recite the values of  $R^1$  and  $R^2$ . Support for this amendment can be found in claim 10.

Claim 16 has been amended for clarity.

No new matter has been added by way of the above-amendment.

### **Claim Objections**

Claims 15 and 16 are objected to under 37 CFR 1.75(c) as being in improper form. Specifically, the Examiner objects to claim 15 for being a multiple dependent claim which depends from both claim 10 and claim 13 and does not express this dependency in the alternative format.

In response, Applicants have amended claim 15 so as not to depend from claim 10.

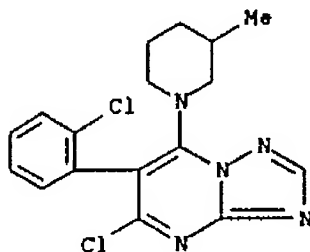
Also, the Examiner objects to the first line of claim 16. In accordance with the Examiner's suggestion, Applicants have amended the first line of claim 16 as follows: "A process for the preparation of the compound...".

Based on the foregoing, reconsideration and withdrawal of the objections are respectfully requested.

### **Prior art based rejection**

Claims 10-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pees et al. (U.S. Patent No. 5,593,996) in view of *In re Norris* (CCPA 1950) 179 F2d 970, 84 USPQ 458. Applicants respectfully traverse the rejection.

As the Examiner may recall, the Examiner cited Pees et al. in the August 21, 2007 Office Action. In the August 21, 2007 Office Action, the Examiner specifically cited the following compound for anticipating the presently claimed invention:



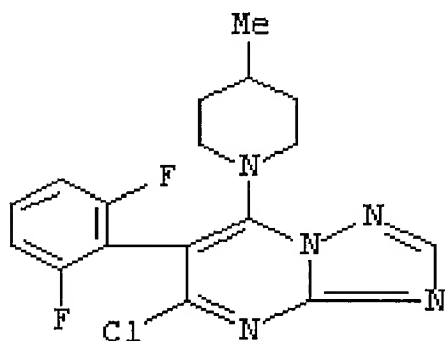
RN 187233-45-0 CAPLUS  
CN [1,2,4]Triazolo[1,5-a]pyrimidine, 5-chloro-6-(2-chlorophenyl)-7-(4-methyl-1-piperidinyl)- (9CI) (CA INDEX NAME)

Applicants brought to the Examiner's attention that inventive claim 10 does not encompass this compound of Pees et al., since inventive claim 10 requires that at least one of L1, L2 and L3 is not hydrogen.

Furthermore, Applicants enclosed a Declaration under 37 CFR 1.132 by Dr. Haden. The Declaration demonstrated the superior fungicidal activity of compounds of the invention in comparison with structurally most closely related compounds disclosed in Pees et al. The superior fungicidal activity of the inventive compounds could not be expected in view of Pees et al.

In response, the Examiner withdrew the rejection.

Now *the Examiner cites Pees et al a second time* except that the Examiner has now switched the focus of the rejection to a different compound, i.e., the following compound which is disclosed as compound 119 in Table IIa of column 24:



However, this compound 119 was one of the compounds specifically used in the Declaration as comparative examples. The Examiner is invited to review the Declaration again.

Although there is a generic overlap between formula (1) of the present invention and formula (I) of Pees et al., none of the explicitly disclosed compounds in Pees et al. is covered by the amended claims. Pees et al. fail to disclose the specific structure of the inventive compounds, which is, *inter alia*, characterized by the cyclic amino group in position 7 and the specific substitution pattern of the phenyl ring in the 6-position (of the triazolopyrimidine scaffold). Pees et al. do not provide any motivation to make the specific modifications to arrive at the compounds of the invention.

In addition, the comparative tests in the Declaration demonstrate the superior fungicidal activity of compounds of the invention in comparison with structurally most closely related compounds disclosed in Pees et al. The superior fungicidal activity of the inventive compounds could not be expected in view of Pees et al.

Accordingly, a *prima facie* case of obviousness cannot be said to exist. Even assuming arguendo that a *prima facie* case of obviousness were to exist (which Applicants do not concede), the evidence of unexpected results overcomes the *prima facie* case. As such, reconsideration and withdrawal of the rejection are respectfully requested.

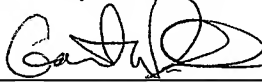
In view of the above amendment, applicant believes the pending application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Garth M. Dahlen, Ph.D., Esq., Reg. No. 43,575, at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Dated: November 23, 2009

Respectfully submitted,

By  #43575

Andrew D. Meikle

Registration No.: 32,868

BIRCH, STEWART, KOLASCH & BIRCH, LLP

8110 Gatehouse Road

Suite 100 East

P.O. Box 747

Falls Church, Virginia 22040-0747

(703) 205-8000

Attorney for Applicant